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5 IN THE UNITED STATES DISTRICT COURT  
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FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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IVAN SANCHEZ ARIAS, a minor by and  
through his Guardian Ad Litem YOLANDA  
ARIAS,

No. 09-cv-00760 CW

12 Plaintiff,

DRAFT  
FINAL JURY  
INSTRUCTIONS

13 v.

14 WILLIAM HARM, California Highway  
15 Patrol Officer,

16 Defendant.  
17 \_\_\_\_\_ /

**DUTY OF THE JURY**

18  
19 Members of the Jury: Now that you have heard all of the  
20 evidence, it is my duty to instruct you as to the law that applies  
21 to the case.

22 A copy of these instructions will be sent with you to the jury  
23 room when you deliberate. You should discard the preliminary  
24 instructions; the final instructions control and you need not  
25 concern yourselves with differences between them and the  
26 preliminary instructions. You must not infer from these  
27 instructions or from anything I may say or do that I have an  
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1 opinion regarding the evidence or what your verdict should be.

2 It is your duty to find the facts from all the evidence in the  
3 case. To those facts you will apply the law as I give it to you.  
4 You must follow the law as I give it to you whether you agree with  
5 it or not. And you must not be influenced by any personal likes or  
6 dislikes, opinions, prejudices, or sympathy. That means that you  
7 must decide the case solely on the evidence before you. You will  
8 recall that you took an oath to do so.

9  
10 In following my instructions, you must follow all of them and  
11 not single out some and ignore others; they are all important.

12 **CLAIMS AND DEFENSES**

13 In this lawsuit Plaintiff claims that Defendant violated his  
14 constitutional rights, under the First and Fourth Amendments, in  
15 the following ways: (1) Defendant arrested Plaintiff without  
16 probable cause; (2) Defendant arrested Plaintiff in retaliation for  
17 exercising his First Amendment rights to free speech and  
18 expression; and (3) Defendant used excessive force against  
19 Plaintiff. Plaintiff has the burden of proving these claims.  
20 Defendant denies the claims.

21 **BURDEN OF PROOF - PREPONDERANCE OF THE EVIDENCE**

22 Plaintiff must prove his claims by a preponderance of the  
23 evidence. When a party has the burden of proof on any claim or  
24 affirmative defense by a preponderance of the evidence, it means  
25 you must be persuaded by the evidence that the claim is more  
26 27

1 probably true than not true.

2 You should base your decision on all of the evidence,  
3 regardless of which party presented it.

4 **WHAT IS EVIDENCE**

5 The evidence from which you are to decide what the facts are,  
6 consists of:

7 (1) the sworn testimony of any witness;  
8 (2) the exhibits which have been received into evidence; and  
9 (3) any facts to which the lawyers may agree.

10 **WHAT IS NOT EVIDENCE**

11 In reaching your verdict, you may consider only the testimony  
12 and exhibits received into evidence. Certain things are not  
13 evidence, and you may not consider them in deciding what the facts  
14 are. I will list them for you:

15 (1) Arguments and statements by lawyers are not evidence. The  
16 lawyers are not witnesses. What they say in their opening  
17 statements, closing arguments, and at other times is intended to  
18 help you interpret the evidence, but it is not evidence. If the  
19 facts as you remember them differ from the way the lawyers state  
20 them, your memory of them controls.

21 (2) Questions and objections by lawyers are not evidence. You  
22 should not be influenced by the objection or by the Court's ruling  
23 on it.

24 (3) Testimony that was excluded or stricken, or that you were  
25

1 instructed to disregard, is not evidence and must not be  
2 considered.

3 (4) Anything you see or hear when the Court is not in session  
4 is not evidence. You are to decide the case solely on the evidence  
5 received at the trial.

6 **RULING ON OBJECTIONS**

7 There are rules of evidence that control what can be received  
8 into evidence. When a lawyer asked a question or offered an  
9 exhibit into evidence and a lawyer on the other side thought that  
10 it was not permitted by the rules of evidence, that lawyer may have  
11 objected. If I overruled the objection, the witness was permitted  
12 to answer the question. If I sustained the objection, the witness  
13 was not permitted to answer the question. If I sustained an  
14 objection to a question, you must ignore the question and must not  
15 guess what the answer might have been.

16 Sometimes I ordered that evidence be stricken from the  
17 record and that you disregard or ignore the evidence. That  
18 means that when you are deciding the case, you must not consider  
19 the evidence that I told you to disregard. [If applicable]

20 **DIRECT AND CIRCUMSTANTIAL EVIDENCE**

21 Evidence may be direct or circumstantial. Direct evidence is  
22 direct proof of a fact, such as testimony by a witness about what  
23 that witness personally saw or heard or did. Circumstantial  
24 evidence is proof of one or more facts from which you could find  
25

1 another fact. You should consider both kinds of evidence. The law  
2 makes no distinction between the weight to be given to either  
3 direct or circumstantial evidence. It is for you to decide how  
4 much weight to give to any evidence.

5 **CREDIBILITY OF WITNESSES**

6 In deciding the facts in this case, you may have to decide  
7 which testimony to believe and which testimony not to believe. You  
8 may believe everything a witness says, or part of it, or none of  
9 it.

10 In considering the testimony of any witness, you may take into  
11 account:

12 (1) the opportunity and ability of the witness to see or hear  
13 or know the things testified to;

14 (2) the witness's memory;

15 (3) the witness's manner while testifying;

16 (4) the witness's interest in the outcome of the case and any  
17 bias or prejudice;

18 (5) whether other evidence contradicts the witness's  
19 testimony;

20 (6) the reasonableness of the witness's testimony in light of  
21 all the evidence; and

22 (7) any other factors that bear on believability.

23 The weight of the evidence as to a fact does not necessarily  
24 depend on the number of witnesses who testify about it.

## OPINION EVIDENCE -- EXPERT WITNESSES

Certain expert witnesses, because of their education and experience, were permitted to state opinions and the reasons for their opinions.

Opinion testimony should be judged just like any other  
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testimony. You may accept it or reject it, and give it as much  
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weight as you think it deserves, considering the witnesses'  
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education and experience, the reasons given for the opinion, and  
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all the other evidence in the case.  
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## **CIVIL RIGHTS CLAIM - INTRODUCTORY INSTRUCTION**

Plaintiff brings his claims under the federal civil rights statute, which provides that any person who, under color of state law, deprives another of any rights, privileges, or immunities secured by the Constitution or laws of the United States shall be liable to the injured party.

## CIVIL RIGHTS CLAIM - ELEMENTS AND BURDEN OF PROOF

The parties agree that Defendant acted under color of state law. Therefore, in order to prevail on his civil rights claim against Defendant, Plaintiff must prove by a preponderance of the evidence that Defendant's acts deprived him of his rights under the United States Constitution.

In this case, Plaintiff has alleged three ways that Defendant violated his constitutional rights. If you find Plaintiff has proved the elements he is required to prove under the instructions

1 regarding (1) probable cause to arrest under the Fourth Amendment,  
2 (2) retaliation for speech and expression in violation of the First  
3 Amendment, or (3) excessive force under the Fourth Amendment, your  
4 verdict should be for Plaintiff. If, on the other hand, Plaintiff  
5 fails to prove any of these violations, your verdict should be for  
6 Defendant.

7

8 **FOURTH AMENDMENT RIGHTS - PROBABLE CAUSE TO ARREST**

9 Plaintiff's first allegation is that Defendant deprived him of  
10 his rights under the Fourth Amendment by arresting him without  
11 probable cause.

12 Under the Fourth Amendment, the arrest of a person without a  
13 warrant is reasonable if the arresting officer had probable cause  
14 to believe the person was committing a crime in the presence of the  
15 officer. In order to prove the arrest in this case was  
16 unreasonable, Plaintiff must prove by a preponderance of the  
17 evidence that he was arrested without probable cause.

18 "Probable cause" exists when, under all of the circumstances  
19 known to Defendant at the time, an objectively reasonable officer  
20 would conclude there is a fair probability that Plaintiff was  
21 committing a crime.

22 **DEFINITION OF RESISTING, DELAYING, OR OBSTRUCTING A PEACE OFFICER**

23 In this case Defendant arrested Plaintiff for willfully  
24 resisting, delaying, or obstructing a peace officer in the  
25 discharge or attempted discharge of the officer's duty. Under the  
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1 California Penal Code such conduct is a crime.

2       The definition of this offense is that (1) the suspect  
3 willfully resisted, delayed, or obstructed a peace officer;  
4 (2) when the officer was engaged in the performance of his duties;  
5 and (3) the suspect knew or reasonably should have known that the  
6 other person was a peace officer engaged in the performance of his  
7 duties.  
8

9       A person willfully resists, delays, or obstructs a peace  
10 officer in the performance of his duties by (among other things)  
11 physically resisting, hiding, or running away from the officer in  
12 violation of a lawful verbal command; ignoring or disobeying the  
13 officer's lawful verbal commands; or interfering with the officer's  
14 efforts to conduct a lawful search or perform an investigation.  
15 Among other things, Defendant claims that Plaintiff disobeyed his  
16 lawful command to stop. An officer may lawfully stop and detain  
17 the occupants of a home during a probation search.  
18

19 **FIRST AMENDMENT RIGHTS - RETALIATION FOR EXERCISE OF FREE SPEECH OR  
20 EXPRESSION**

21 Plaintiff's second allegation is that Defendant deprived  
22 him of his rights under the First Amendment of the Constitution by  
23 arresting Plaintiff in retaliation for his exercise of free speech  
24 and expression. Under the First Amendment, Plaintiff had the right  
25 to free expression and speech. In order to prove that Defendant  
26 violated his First Amendment right, Plaintiff must prove the  
27 following elements by a preponderance of the evidence:  
28

1       1. Plaintiff engaged in speech or expression protected under  
2 the First Amendment;

3 2. Defendant took action against Plaintiff; and

3. Plaintiff's protected speech and expression, or the

6 chilling of Plaintiff's protected speech and expression, were a  
7 substantial or motivating factor for Defendant's action.

8 A substantial or motivating factor is a significant factor.

## FOURTH AMENDMENT RIGHTS - EXCESSIVE FORCE

10 Plaintiff's third allegation is that Defendant deprived him of  
11 his rights under the Fourth Amendment when Defendant used excessive  
12 force against him.

14        In general, an arrest of a person is unreasonable under the  
15        Fourth Amendment if a police officer uses excessive force in making  
16        a lawful arrest. Thus, in order to prove an unreasonable arrest in  
17        this case, Plaintiff must prove by a preponderance of the evidence  
18        that Defendant used excessive force when he arrested Plaintiff.

If Defendant punched Plaintiff in the face as Plaintiff claims, that would amount to excessive force.

## CAUSATION

23        In order to establish that the acts of Defendant deprived  
24 Plaintiff of his rights under the United States Constitution as  
25 explained in these instructions, Plaintiff must prove by a  
26 preponderance of the evidence that the acts were so closely related  
27 to the deprivation of Plaintiff's rights as to be the moving force

1 that caused the ultimate injury.

2 **NEGLIGENCE AND RECKLESSNESS INSUFFICIENT FOR LIABILITY**

3 A police officer's failure to exercise due care in the exercise  
4 of his duties is not sufficient to constitute a violation of  
5 Constitutional rights. If you find that Plaintiff suffered an  
6 injury due to negligence by Defendant, therefore, such negligence  
7 does not constitute a Constitutional violation. Even recklessness  
8 does not violate the Constitution. Therefore, if you find that  
9 Defendant acted negligently or recklessly, that does not constitute  
10 a violation of Plaintiff's constitutional rights.

12 **COMPENSATORY DAMAGES**

13 It is the duty of the Court to instruct you about the measure  
14 of damages. By instructing you on damages, the Court does not mean  
15 to suggest for which party your verdict should be rendered.

17 If you return a verdict for Plaintiff, then you must award him  
18 such sum of money as you believe will fairly and justly compensate  
19 him for any injury you believe he actually sustained as a direct  
20 consequence of Defendant's conduct. Damages means the amount of  
21 money that will reasonably and fairly compensate Plaintiff for any  
22 injury you find was caused by Defendant.

24 You may award actual damages only for those injuries which you  
25 find that Plaintiff has proven by a preponderance of the evidence.  
26 Moreover, you may award actual damages only for those injuries  
27 which you find Plaintiff has proven by preponderance of the

1 evidence to have been the direct result of Defendant's conduct that  
2 violated Plaintiff's rights. That is, you may not simply award  
3 actual damages for any injury suffered by Plaintiff -- you may  
4 award actual damages only for those injuries that are a direct  
5 result of actions by Defendant and that are a direct result of  
6 conduct by Defendant which violated Plaintiff's rights.  
7

8 Actual damages must not be based on speculation or sympathy.  
9 They must be based on the evidence presented at trial, and only on  
10 that evidence. It is for you to determine what damages, if any,  
11 have been proved.  
12

#### **MEASURES OF TYPES OF DAMAGES**

13 In determining the measure of damages, you should consider the  
14 nature and extent of the mental, physical, emotional pain and  
15 suffering Plaintiff experienced and which, with reasonable  
16 probability, he will experience in the future.  
17

#### **NOMINAL DAMAGES**

18 The law which applies to this case authorizes an award of  
19 nominal damages. If you find for Plaintiff but you find that  
20 Plaintiff has failed to prove damages as defined in these  
21 instructions, nominal damages will be awarded. Nominal damages do  
22 not exceed one dollar.  
23

#### **PUNITIVE DAMAGES**

24 If you find for Plaintiff, you may, but are not required to,  
25 award punitive damages. The purposes of punitive damages are to  
26  
27

1 punish a defendant and to deter similar acts in the future.  
2 Punitive damages may not be awarded to compensate a  
3 plaintiff.

4 Plaintiff has the burden of proving by a preponderance of the  
5 evidence that punitive damages should be awarded, and, if so, the  
6 amount of any such damages.  
7

8 You may award punitive damages only if you find that  
9 Defendant's conduct that harmed Plaintiff was malicious,  
10 oppressive, driven by evil motive or intent, or involves callous  
11 indifference to Plaintiff's rights. Conduct is malicious if it is  
12 accompanied by ill will, or spite, or if it is for the purpose of  
13 injuring Plaintiff. Conduct is in callous disregard of  
14 Plaintiff's rights if, under the circumstances, it reflects  
15 complete indifference to Plaintiff's safety or rights, or if  
16 Defendant acts in the face of a perceived risk that his actions  
17 will violate Plaintiff's rights under federal law. An act or  
18 omission is oppressive if Defendant injures or damages or  
19 otherwise violates the rights of Plaintiff with unnecessary  
20 harshness or severity, such as by the misuse or abuse of authority  
21 or power or by the taking advantage of some weakness or disability  
22 or misfortune of Plaintiff.  
23

24 If you find that punitive damages are appropriate, you must  
25 use reason in setting the amount. Punitive damages, if any,  
26 should be in an amount sufficient to fulfill their purposes but  
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1 should not reflect bias, prejudice or sympathy toward any party.  
2 In considering the amount of any punitive damages, consider the  
3 degree of reprehensibility of Defendant's conduct, including  
4 whether the conduct that harmed Plaintiff was particularly  
5 reprehensible because it also caused actual harm or posed a  
6 substantial risk of harm to people who are not parties to this  
7 case. You may not, however, set the amount of any punitive  
8 damages in order to punish Defendant for harm to anyone other than  
9 Plaintiff in this case.

10  
11 In addition, you may consider the relationship of any award  
12 of punitive damages to any actual harm inflicted on Plaintiff.

13 Punitive damages may be awarded even if you award Plaintiff  
14 only nominal, and not compensatory, damages.

15 **USE OF NOTES**

16 Some of you have taken notes during the trial. Whether or  
17 not you took notes, you should rely on your own memory of what was  
18 said. Notes are only to assist your memory. You should not be  
19 overly influenced by the notes.

20  
21 **JURY TO BE GUIDED BY OFFICIAL ENGLISH TRANSLATION**

22 The Spanish language was used during this trial. The  
23 evidence you are to consider is only that provided through the  
24 official court translators. Although some of you may understand  
25 Spanish, it is important that all jurors consider the same  
26 evidence. Therefore, you must base your decision on the evidence

1 presented in the English translation. You must disregard any  
2 different meaning of the non-English words.

3 **DUTY TO DELIBERATE**

4 When you begin your deliberations, you should elect one  
5 member of the jury as your presiding juror. That person will  
6 preside over the deliberations and speak for you here in court.  
7

8 You will then discuss the case with your fellow jurors to  
9 reach agreement if you can do so. Your verdict must be unanimous.

10 **COMMUNICATION WITH COURT**

11 If it becomes necessary during your deliberations to  
12 communicate with me, you may send a note through the marshal,  
13 signed by your presiding juror or by one or more members of the  
14 jury. No member of the jury should ever attempt to communicate  
15 with me except by a signed writing; I will communicate with any  
16 member of the jury on anything concerning the case only in  
17 writing, or here in open court. If you send out a question, I  
18 will consult with the parties before answering it, which may take  
19 some time. You may continue your deliberations while waiting for  
20 the answer to any question. Remember that you are not to tell  
21 anyone -- including me -- how the jury stands, numerically or  
22 otherwise, until after you have reached a unanimous verdict or  
23 have been discharged. Do not disclose any vote count in any note  
24 to the Court.  
25  
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## **RETURN OF VERDICT**

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your presiding juror will fill in the form that has been given to you, sign and date it, and advise the Court that you are ready to return to the courtroom.

Dated:

CLAUDIA WILKEN

United States District Judge

